Chapter 22: Human Rights

Introduction

Case Study box **-** ***Should the international community intervene in Darfur?***

A humanitarian tragedy has unfolded in this Western province of Sudan since 2003 when long-running ethnic tensions between some Arab and Black groups escalated dramatically. Human Rights pressure groups suggest that at least 300,000 people have been killed in this time, although the government- which is Arab- denies that it is anywhere near this level. Systematic massacres of principally Black Darfurians by an Arab non-state armed group, the *Janjaweed*, with the apparent support of the Sudanese government, have shocked the world and brought calls for an armed intervention to end the suffering.

But, would such a response end the suffering?

Liberal opinion (though not exclusively) contends that, when faced with such a humanitarian catastrophe, traditional notions of sovereignty should be set aside and 'something should be done'. Many Realists, however, contend that such well-intentioned action would be wrong, arguing that history suggests it

is best not to interfere in other countries' affairs since it is only likely to enflame matters.

Would you support your country's troops being despatched to fight for an end to this conflict or do you feel that they should only be expected to put their lives at risk in defence of their own citizens?

This chapter will expand upon the quintessential debate of International Relations introduced in the opening box and consider:

- The meaning and rise of the concept of human rights in international affairs.
- The roles played by the United Nations and civil society in advancing human rights by promoting the implementation of existing legal instruments and developing further ones.
- Why there is resistance to this development of human rights (from quarters other than human rights abusers themselves!)

The Evolution of the Idea of Human Rights

The early history of human rights

Box 22.1 Early development in human rights law

1815	Slave trade declared immoral at Congress of Vienna & Treaty of Ghent.
1864	1st Geneva Convention sets out rules of war
1890	Brussels Convention on Slavery
1901	International Labour Office established to set global standards for workers.
1926	Slavery Convention
1946	United Nations Commission on Human Rights established
1948	Universal Declaration of Human Rights adopted

The idea that all individuals have certain inalienable rights which should be enshrined in national law has, in some countries, been advanced from ancient times but most notably started to become established from the late eighteenth century when the political philosophy of Liberalism took hold in some countries. The notion of governments taking legal or political steps to protect individuals other than their own nationals / citizens is, however, a relatively recent one in international affairs and still a long way from being firmly established in international law. The cooperative diplomatic environment of the 19th Century 'Concert of Europe', when the major powers of the Continent, shocked by the devastation of the Napoleonic Wars, resolved to work together to ensure peace, prompted the first significant attempts to enshrine human rights in international law. At the Congress of Vienna in

1814-15 the great European powers of France, Great Britain, Russia, Austria-Hungary and Prussia agreed to work towards ending the slave trade throughout the world, declaring it to be 'repugnant to the principles of humanity'. A similar declaration was made earlier in that year by the British and US governments at the Treaty of Ghent. It was not until the 1890 Brussels Convention on Slavery, however, that the slave trade was actually made illegal under international law and not until the 1926 Slavery Convention that slavery itself (in addition to slave trading) was outlawed.

From the 1870s unprecedented European diplomatic coordination dissolved into unprecedented conflict and nationalism as the continent split into two armed camps and became the focus of two world wars. Against this backdrop human rights predictably did not progress greatly in the first half of the twentieth century. The League of Nations did not develop any global bill of rights, despite a US-British initiative to incorporate this into the Covenant (the founding Treaty upon which the organization was built). The British dropped the proposal after the Japanese government requested an article on racial equality be included, since this would have proved embarrassing given the 'White Australia' policy in operation in its colony which discriminated against potential non-white migrants. The League, nonetheless, did give birth to some important human rights initiatives. It made guaranteeing the right of national minorities a condition of membership for states newly established from the break up of the Austro-Hungarian and Turkish Ottoman empires (such as Iraq)

and its Permanent Court of International Justice condemned state discrimination against minorities in the 1935 *Minority Schools in Albania* case and other Advisory Opinions. Most significantly the League pioneered the idea of a right of **asylum** for individuals fleeing political persecution from their own government or fellow countrymen by emigrating. The Nansen Passport, named after the legendary Norwegian Polar explorer turned League High Commissioner for Refugees, guaranteed asylum in 52 of the organization's member states. The League also helped promote the notion of universal workers rights by incorporating, within its system of Specialized Agencies, the International Labour Organization (ILO) ,which as far back as 1901 had initiated resolutions seeking to ensure fair standards in terms of issue like working hours, maternity rights and unemployment benefits for all people.

box 22.2 ***PHOTO***

From where does the idea of human rights originate?

There is, of course, no definitive answer to this question. Inevitably, different countries lay claim to being the home of human rights. The French Revolution of 1789 justified deposing a monarchical political system as advancing the 'rights of man' and in doing so was influenced by similar claims of individual empowerment advanced in the US Declaration of Independence issued after the overthrow of British imperial rule 13 years earlier. The British themselves point to the *Magna Carta* of 1215 which began the process of limiting the

powers of their monarch and developing the idea of certain legal rights pertaining to all people.

Much earlier still than the *Magna Carta*, however, was a 5th Century BC proclamation by a Persian king announcing measures to safeguard members of non-Persian religious and ethnic groups in his Empire from persecution. Pictured is the 'Cyrus Cylinder', today housed in the British Museum, which sets out these rights. Contrary to most Western expectations, might Iran (modern day Persia) be the true home of human rights?[i]

What are human rights?

Precisely what does and does not constitute an inalienable right of all people in the world is disputed. Countries differ in the rights- if any- they confer to their citizens and there is no clear consensus on where the line is drawn between an indisputable right of all regardless of circumstances and a wish list of preferences only achievable if the economic and security situation permits it.

Conventionally it is suggested that there are three broad categories of human rights:

- *civil and political* rights are most associated with liberalism and the 'Western' world of the European and North American democracies. The Magna Carta, US Declaration of Independence and the reforms of the French Revolution are in this tradition of setting out measures to safeguard individuals from the possibility of tyranny meted out be their governments. Hence civil and political rights include ideas associated with Liberal Democracy, such as free speech, the right to vote for your government and guarantees against being arrested without good reason.

- *economic and social* rights are concerned with an individual's **entitlements from** the state- such as health care and an education- rather than protection against it. This idea of such rights was originally most associated with socialist political thought but generally began to be recognized in the 20th century after the emergence of civil and political rights in the Western world. To a Marxist the idea an individual needing rights against their government is illogical since they consider the (socialist) state to be the embodiment of the people. Economic and social rights are not, however, the preserve of countries with histories of Communist or even Social Democratic rule. Western Liberal Democracies and liberal political philosophy in the 20th Century came to embrace the idea of state welfare and social protection as a consensus amongst Liberal, Conservative and Socialist

political parties emerged (hence the International Labour Organization had begun drafting global worker standards from 1901).

- *collective* rights were most associated with what was once known as the 'Third World'. Africa and particularly East Asian political philosophy is often considered to be less preoccupied with individuals and more focussed on the rights of societies. This, like economic and social rights, is most associated with 20th century international politics though has deeper roots. The notion of national self-determination as a right swept through Europe and Latin America in the 19th Century with political activists from one country often lending their support to separatists from other countries in a wave of 'Liberal nationalism'. British poet Lord Byron, for example, met his death preparing to fight for Greek independence from the Turkish Ottoman Empire. After World War One this phenomenon globalized as **Idealists** (see Chapter 8) embraced decolonisation as part of a new, more moral world order. The League of Nations thus devised the mandate system under which colonies of Germany and Turkey seized by the British, French and their allies in the Great War, rather than simply being conquered as the spoils of war, were groomed for independence. This right to independence was more clearly still enshrined in international affairs when the UN emerged after World War Two with many newly decolonised Asian and African states amongst its ranks.

The United Nations and the Codifcation of Human Rights

The horrors of World War Two prompted the first systematic and sustained attempt to enshrine human rights into international law as part of the UN system. Mandated by Article 68 of the UN Charter, a Commission on Human Rights, comprising top lawyers, was established to work on drafting a bill of rights for the world. This became known as the Universal Declaration of Human Rights. The Declaration is made up of thirty short articles of mainly civil and political rights and was adopted by the General Assembly on December 10th of 1948 (Human Rights Day). No member state voted against the Declaration but there were abstentions from the Soviet Union and their East European allies, South Africa and Saudi Arabia. Apartheid era South Africa could hardly have been expected to support ethnic equality and the Saudi's objected to the notion of religious freedom. Stalin's Soviet Union was an even less likely enthusiast for human rights but they based their objections on the Western bias of the Declaration and argued for economic and social rights to be included. It is also often considered that many countries who did vote in favour probably had little idea that the resolution would ever have any real significance.

The Declaration was just that- a statement without any legal commitment on the states-and from 1948 the Commission on Human Rights turned their attention to developing legal instruments to **codify** the themes of the articles and other rights. In line with the Soviet objections and the increased acceptance of a widened notion of rights in Western Europe, the legal instruments devised were twin Covenants on Civil and Political and also Economic and Social Rights. Against the backdrop of the Cold War it took nearly 20 years to get these covenants ratified but by 1976 they had finally entered into international law. By 2010 their application was impressively universal with- of the 192 UN members- 165 having ratified the Civil & Political Covenant and 160 the Economic & Social Covenant.

box 22.3 The UN Twin Covenants

CIVIL & POLITICAL RIGHTS	**ECONOMIC & SOCIAL RIGHTS**
	Right to:
a) Right to life, liberty & property	a) Work for just reward
b) Right to marry (reproductive rights)	b) Form & join Trade Unions
c) Right to fair trial	c) Rest & holidays with pay
d) Freedom from slavery, torture and arbitrary arrest	d) Standard of living adequate to health
	e) Social Security
	f) Education

e) Freedom of movement & to seek asylum f) Right to a nationality g) Freedom of thought & religion h) Freedom of opinion I) Freedom of assembly & association j) Right to free elections, universal suffrage	g) Participation in cultural life of the community

The Covenant on Civil & Political Rights also has two optional protocols allowing parties to additionally commit themselves to the abolition of the death penalty (except in times of war) and permitting their citizens to make individual petitions to the UN if they feel their government has violated their rights[ii].

Collective rights were not awarded a distinct covenant but the right to self-determination is written into the first article of both covenants and was incorporated into the Chapter XI of the UN Charter. In fact it could be argued that collective rights are the most fully implemented of the three types since the UN has succeeded in completing the League of Nation's mandate system

work and nearly all colonies desiring independence have achieved this under its watch.

The 1993 World Conference on Human Rights at Vienna in its Programme for Action, adopted by 171 states, confirmed that the three categories all made up the notion of human rights. A consensus had been arrived at that governments had a duty to grant their own citizens both freedoms and core entitlements as well as respecting other people's rights, both individually and collectively. These various obligations should be understood as; "universal, indivisible and interdependent and interrelated" (World Conference on Human Rights, 1993 I, 3).

In addition to codifying the twin covenants, the Commission has sought to further the development of human rights by developing a series of more specific instruments seeking to protect specifically vulnerable groups of people summarized in the next section.

Genocide / racial discrimination

The first major achievement of the UN Commission of Human Rights after drafting the Declaration was to formulate the 1948 Convention on the Prevention and Punishment of Genocide. The convention proscribes acts which aim to 'destroy in whole or in part a national, ethnic, racial or religious group'. Commission member Rafael Lemkin, a Jewish International Law

lecturer at Yale University who had fled Nazi persecution in Poland, both coined the term *genocide* and played a leading role in the formulation of the 'Genocide Convention'. The word, which combines the Greek *genos* (meaning race / family) with the Latin *cide* (to kill), had particular resonance to him since forty-nine members of his family and six million of his fellow nationals had been murdered by what Winston Churchill called the 'crime without a name'.

Though the word did not exist at the time, the first systematic international political response to an act of genocide occurred during World War One when a declaration was made by the allied powers of France, Russia and Great Britain about the widespread massacres of Armenians which had occurred in the Turkish Ottoman Empire. Hundreds of thousands of Armenians were systematically killed in an episode which was noted in Hitler's *Mein Kampf* and possibly inspired his 'Final Solution' for Europe's Jews. No real justice for the estimated 1.5 million slaughtered Armenians was ever achieved, however. The 'Young Turk' revolution of 1922, which replaced the Ottoman monarchy with a more Western-oriented secular Republic, brought about a reconciliation between the allied powers and the Turks and absolved the new government of responsibility for pursuing crimes committed in the Ottoman era (Schabas 2000: 14-22).

In 1951 the UN's International Court of Justice declared that, since the 1948 convention was so widely ratified, genocide came into the category of 'customary international law', making it a crime anywhere in the world. The precedent for the universal jurisdiction of the Genocide Convention was established by the 1962 *Eichmann case* when Israeli secret agents kidnapped the former Nazi General and tried him in Israel for anti-Jewish genocide[iii]. This means that genocide can be understood as a rare case of **Public International Law** functioning as 'proper' law. Countries which have not ratified the convention are not excluded from its jurisdictional reach and there is a duty on all states which have ratified to prosecute those guilty of the crime where they can. Hence, whilst the Rwandan genocide of 1994 represented a crime against over 800,000 Tutsis committed by their Hutu murderers, it was also a crime that the international community neglected to come to their aid. Some Hutus have since been prosecuted for the crime by a specially-established UN court but there have been no recriminations for the UN member-states who lacked the desire or incentive to intervene in the carnage beyond rescuing some of their own nationals. Whilst there can be no doubt that the rapid scale of ethnic killing in Rwanda amounted to a genocide, determining when racial or religious killings come into this category is a moot point and in situations such as the Darfur crisis there is a marked caution by governments to user the 'g word' since this would entail an obligation to act.

Torture

1984 Convention against Torture followed up Article 5 of the UN Declaration to criminalize state torture under any circumstances (including the theoretical 'ticking bomb' scenario- where an apprehended terrorist refuses to reveal the whereabouts of a weapon primed to imminently inflict mass casualties- frequently offered as a defence of such tactics). The Torture Convention is considered part of customary international law but has seen its rules bent even by Western Liberal Democracies. The US government's approval for 'torture lite' techniques such as sleep deprivation and 'water boarding[iv]' at its Guantanemo Bay on the island of Cuba camp holding prisoners of the Iraq and Afghan Wars was a clear case of this.

Refugees and migrants

The 1951 Geneva Refugee Convention continued with the League of Nations' refugee regime by declaring it illegal for a receiving state to deport a person fleeing persecution to a country where they are likely to be imperilled. The Geneva regime at the time was largely seen as a 'mopping up' operation for living victims of Nazi oppression in the same way that the League's regime was aimed at re-settling people uprooted by the Russian Civil War, but it has become much more than that. By 1967 it was clear that long running conflicts, such as in Palestine and the Congo, were making refugees far more than a temporary phenomenon and a Protocol to the convention removed geographical and time limits from its scope and effectively universalised and

made permanent its core provisions. By 2010 147 states were covered by these provisions.

In recent years, however, the permanence and universality of the Refugee Convention has started to come into question. Countries have always differed in how readily they will grant asylum to a refugee but some governments have begun to question whether they should continue to be bound to give refuge at all. This is largely the result of the unforeseen rise in numbers of refugees. In 2008 there were an estimated 16 million refugees and asylum seekers in the world, up from around 3 million in the early 1970s (UNHCR 2008). The increased prevalence and persistence of civil wars is a major factor behind this. People in many democratic countries have pressured their governments for action to curb the numbers of asylum seekers through the belief that many are really economic migrants using political unrest in their countries as a pretext for moving. As a result of this, many governments- such in Australia and the UK- have made the process of applying for asylum more rigorous and even resorted to incarcerating asylum seekers until their applications have been processed.

Other – non-universal- Human Rights Treaties

Racial

For ethnically-based abuses short of genocide (i.e. not systematically seeking to eliminate a whole national group) the Convention on the Elimination of All

Forms of Racial Discrimination (CERD) came into force in 1969 outlawing racial or national discrimination and holding the ratifying states accountable for societal as well as governmental violations. Since it is near universally and unreservedly ratified CERD is significant enough to amount to 'an international law against systemic racism' (Robertson 2000: 94). Many Liberal democracies have followed the lead of CERD in framing domestic race relations laws and criminalizing the incitement of racial hatred. The CERD regime also permits individuals to take up cases against governments. Set against this, however, countries with the most serious ethnic tensions have systematically failed to report to the CERD Committee which implements the regime.

Women

The 1981 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is a bill of rights for the women of the world outlawing sexual discrimination. CEDAW appears impressively universal, having amassed some 186 ratifications by 2010 (Iran, Sudan, Somalia and the US have not ratified due to the power of religious conservatism in these countries). Robertson, however, argues that CEDAW is far less influential than its close relation CERD owing to the number and nature of reservations to its provisions lodged by the ratifying parties (Robertson 2000:94). The most frequently derogated from articles are 5 and 16 which deal with, respectively, the role of women in relation to customs / culture and the family. Since these

two factors are those that most threaten the rights of women this is a serious limitation on the Convention's effectiveness.

Children

The Convention on the Rights of the Child is centred on ensuring that 'the best interests of the child' are respected in legal matter,such as in guaranteeing a relationship with both parents in the event of their separation or legal measures taken against them. The use of the death penalty against anyone under 18 is also proscribed. All UN members bar Somalia and the US have ratified the Convention. The US government have justified their non-participation as necessary to protect 'family rights', although the execution of children in Texas is an additional barrier to their ratification.

Economic migrants

The 1990 Convention on the Rights of all Migrant Workers and Members of Their Families seeks to protect economic migrants from exploitation. The Migrant Workers convention came into force in 2003 but it is, as yet ineffectual since its parties are overwhelmingly countries of emigration with recipient states reluctant to commit to measures ensuring they treat non-nationals equally to their own nationals.

The Disabled

Around 650 million people, or one tenth of the world, are restricted by mental, physical or sensory impairment but, until recently, were not specifically covered by international human rights legislation. Following a campaign led by pressure groups cooperating in the International Disabilities Alliance a Convention on the Rights of Persons With Disabilities was adopted unanimously by the UN General Assembly in 2006 and entered into force in 2008. The articles of the convention, in general, look to ensure a better quality of life for the disabled through fuller participation in society with economic and social rights such as employment and a right to an education to the fore accompanied by civil liberties such as reproductive rights.

Forms of Human Rights Abuse not Specifically Covered by Global Human Rights Regimes

Homosexuals

Many people have been abused and continue to be abused purely on the grounds that they practise consensual sexual activities with other people of the same sex. Domestic legal restrictions on homosexuality have greatly lessened in most of the developed world over recent decades but in 2009 there were still 80 states legally prohibiting same sex relationships and five which retained the death penalty for homosexuality (Iran, Mauritania, Sudan, Saudi Arabia and Yemen). In many of these states illegality is a technicality which does not

necessarily lead to prosecution but several Iranians have been hanged in recent years for consensual, adult homosexuality (ILGA 2009).

Even more clearly than with women's rights, the difficulties of overcoming cultural differences in establishing global standards are apparent when considering the rights of homosexuals and other minority sexualities. The UN has been unable to reach a consensus to give the same status to sexual freedom as religious or political freedom in international human rights law. The right to have same-sex relationships is not covered in the UN Declaration or Covenants and the extermination of people on grounds of their sexual practises- which occurred in the Nazi holocaust- is not included in the1948 Genocide Convention

Politicide

Strikingly absent from the UN definition of genocide is the mass, systematic killing of political and / or social opponents by radical governments or non-governmental forces. Since the targets of such action are not necessarily national, ethnic or religious minorities the distinct category sometimes referred to as *politicide* is necessary for a complete understanding of this form of human rights abuse (Harff & Gurr 1988). The omission of politicide from the UN Convention is the result of the predictable opposition of the USSR to classifying their extermination of opponents alongside that of the Nazis. The Soviet regime represented at the UN drafting of the Convention on Genocide

can claim the dubious distinction of being history's most brutal ever with an estimated 62 million political opponents killed during the three-quarter century lifespan of the USSR (Rummel 2003: table 1.3). Politicide and other non-specified forms of human rights abuse are, however, increasingly accepted as coming within the residual category of '**crimes against humanity**' covered in the UN charter and previously referred to in the actions initially taken against the Turkish government for the Armenian genocide since that word and crime had yet to be defined.

Implementing Human Rights

Codifying law is only part of the process of developing human rights. Implementing international law is always a more difficult task than with domestic law because of the barrier presented by the notion of sovereignty and this is especially so when law is focussed on individuals, traditionally considered the preserve of governments and domestic courts.

United Nations

There are UN mechanisms for implementing human rights but they have been limited and uneven in their impact. The UN Commission on Human Rights' record on encouraging the implementation of the Declaration and Covenants it crafted is, according to the esteemed human rights lawyer Geoffrey Robertson, 'woeful' (Robertson 2000: 45). The Commission, restrained by

intergovernmental politicking, failed even to condemn the horrific politicides / genocides in Cambodia and Uganda in the late 1970s. In Uganda dictator Idi Amin had massacred political opponents and expelled thousands of ethnic minorities from his country. In Cambodia Pol Pot's reign of terror had seen up to a million of his own citizens slaughtered for the ideological mission of returning his country to 'year zero'. The Commission was beefed up in the 1990s, with the appointment of a full-time Commissioner at its head, but still lacked any enforcement powers beyond 'naming and shaming'. Hence, in 2006, the General Assembly approved the creation of a new body to take over from the Commission, the Human Rights Council (HRC). The HRC meets three times per year (the Commission met only once per year) and comprises representatives of 47 states elected by the General Assembly. Concerns that the voting procedure would continue the trend established under the Commission of electing members from countries with poor rights records and that its actions may be politicised was cited by the Israel for their non-involvement in the organ.

Also contributing to the implementation of human rights standards are committees established with some of the covenants and conventions that have entered into force. The Human Rights Committee was set up to monitor the implementation of the Covenant on Civil and Political Rights. However, only a small number of admissible cases had been lodged with the HRC by this

time and many governments- including the US, UK and China- have shown no inclination to be committed to the procedure.

The Committee on the Elimination of Racial Discrimination (CERD) and the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) have the capacity to take up individual cases for states that permit this. CEDAW has on occasion been cited in defence of women in domestic legal cases. The Constitution of Brazil, for example, has been amended to bring it into line with the provisions (IFUW 1999). Within the Children's Rights regime a UN Committee on the Rights of the Child examines parties' progress in implementing the convention and has made some progress in embarrassing some governments into implementing legal changes, such as separating juvenile from adult war criminal suspects detained in Rwanda.

The HRC and implementing committees have had some successes in informing legal cases but these instances are few and far between and, of course, the countries concerned are not the ones where the most serious human rights violations are occurring, which are invariably- though not exclusively- undemocratic states.

Civil Society

Pressure groups have played a big role in facilitating the implementation of international law on human rights by forming a key partnership with the

United Nations. Amnesty International, which has grown from a one man campaign, launched by British journalist Peter Benenson in 1961, to a multi-million pound operation with over 2 million members in over 150 countries, work on highlighting non-compliance with the UN Covenant on Civil and Political Rights and have a particular focus on judicial rights (e.g. fair trials). As well as helping implement existing legislation, Amnesty have taken the lead in promoting the development of new law to be taken on by the UN, such as with the Torture convention. The US based group Human Rights Watch, whilst also working in conjunction with the UN, have focussed on facilitating the implementation of the Helsinki Accords, established during the Cold War to improve human rights in the context of East-West relations, and most of their activities serve to highlight violations of free expression. Over 200 other pressure groups perform similar functions in the world today, mainly in the area of civil and political rights.

National Courts

Since genocide, torture and 'crimes against humanity' are part of customary international law some national courts have come to assume the right to pass verdicts on crimes committed on individuals other than their own citizens. In the 1990s new impetus was given to the politics of human rights by the end of the Cold War but the world also witnessed the spectre of genocide revived in Rwanda and Yugoslavia. This prompted successful cases brought in Germany and Belgium for such crimes committed in Bosnia and Rwanda[v]. The 1999

Pinochet Case in the UK also proved to be key test case in international human rights law. The British courts rejected a Spanish request to arrest the former Chilean dictator Pinochet (on the grounds of ill health) but, at the same time, made it clear that his crimes (of politicide and torture) did amount to 'crimes against humanity' against which sovereignty was no defence. The UK verdict also indicated that diplomatic immunity (Pinochet claimed this as a former President and 'life Senator') was no protection against such crimes.

A setback to the development of this method of implementing global human rights came with a 2002 verdict by the UN's court, The International Court of Justice, which ruled that Belgium was not entitled to try a Government Minister of the Congo, Ndombasi, for his role in a massacre of Tutsis in Kinshasa[vi]. Belgian authorities were instructed that they had no right to strip Ndombasi of diplomatic protection, even in view of the gravity of the offences of which he was being accused. This development was to the relief of some in the Belgian government who had become alarmed at the likely diplomatic fallout from their country vainly seeking to bring a long list of recent tyrants to justice in Brussels. The ICJ verdict brought dismay to human rights activists for setting back the cause of universality in human rights law but, ultimately, the case may help strengthen the arguments in favour of global justice. The prospect of dozens of states around the world simultaneously pursuing various individuals in the name of international law could also be said to demonstrate the necessity of a global judiciary less vulnerable to criticisms of partisanship

and more likely to be able to meet success in pursuing individuals traditionally protected by sovereignty. The International Criminal Court (ICC), considered in the next section, could yet fulfil this function.

Global Courts

The idea of an international court to try individuals, alongside the International Court of Justice dealing with state to state conflicts, was around at the birth of the United Nations but, like many other global aspirations, was frozen in time by the Cold War. An international criminal court had earlier been proposed during the time of the League of Nations in relation to a stillborn 1937 convention dealing with terrorism. An early draft of the Genocide Convention floated the idea of a court to enforce its provisions but this was soon shelved as too radical a notion to put to the bifurcating international community (Schabas 2001: 8). Instead Article VI of the convention provides for justice to be dispensed either in the courts of the country where the crimes occurred or else in a specially convened international tribunal. This was the case with the Nuremberg and Tokyo trials, which prosecuted Nazi and Japanese war criminals in the 1940s, and the *ad hoc* tribunals established by the Security Council to try individuals for genocide and war crimes in Yugoslavia and Rwanda in the 1990s

The idea of the ICC did not perish during the Cold War years and, when the opportunity then presented itself at the close of the 1980s, the UN's

International Law Commission (ILC), a body responsible for the codification of international law, revived the plan. In 1992 the General Assembly gave the go ahead to the ILC to draft a blueprint for the ICC, paving the way for the 1998 Rome Conference, at which the statute for the court was agreed upon and opened for signature. By 2002 the statute had received enough ratifications to enter into force and the court was born. Only seven states opposed the court at the Rome Conference (US, Israel, China, Iraq, Sudan, Yemen and Libya) and, by 2010, it has 110 parties. The US declined to ratify the Rome Convention that underpins the ICC largely on the grounds that it would be unconstitutional to permit a US citizen to be tried outside of the US legal system for an alleged US-based crime and that, as the world's only superpower, they would be more likely to have cases brought against them than other states, whether through the fact that they are more prominent in UN military operations than most or due to trumped up charges based on anti-Americanism.

How influential the ICC can become remains to be seen (by 2010 it had only taken up cases in fours countries) but it could eventually give real meaning to international human rights law by exercising the sort of supranational authority witnessed only sporadically and selectively to date. A key difference with the ICC, between the ICC and previous *ad hoc* human rights courts is that it will not have to get approval to act form the 'Big 5' in the UN Security Council and so be less vulnerable to criticism of partiality to the Great Powers and of only ever being an arbiter of 'victor's justice'. In 2005, a significant

boost to the credibility of the court was given by an agreement by the UN Security Council to refer to it the Darfur (Sudan) genocide case despite the initial hostilities of the US to involving a body it does not support and the fact that Sudan is not a party. In time, the court could also potentially widen the the grounds upon which it can launch a prosecution beyond the current remit of genocide, war crimes and crimes against humanity since Article 10 of its Treaty refers to the evolution of its statutes in line with customary international law.

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Regional Courts

European Convention on Human Rights

The regime centred on the Council of Europe, an older and wider body than the European Union, is undoubtedly the most extensive international human rights system in the world. Established in 1950 and now covering 47 states (essentially all of Europe- including Turkey and Russia- bar Belarus, the continent's last dictatorship). Individual petition by citizens is the main channel for taking up cases, although some cases taken up by one government against another have also occurred.

The Convention originally sought to implement the UN Declaration in Western Europe but has evolved into something much more extensive than anything within the UN system. The European Court of Human Rights (ECHR) has gradually assumed the right to be 'creative' in interpreting the

articles of the convention thereby allowing it to pass verdicts- binding on all government parties- that go well beyond the most blatant forms of human right abuses. The ECHR, for example, have interpreted Article 8 of the European Convention on Human Rights, which upholds 'Respect for Private and Family Life', originally intended to give protection against forced sterilizations, to include gay rights. As a result of this huge advances in gay rights have occurred in Europe including the decriminalization of homosexuality in Northern Ireland (1981), the Republic of Ireland (1988) and Cyprus (1993).

Organization of American States

The OAS's Declaration on the Rights and Duties of Man actually pre-dates the UN Declaration (by 7 months) but the Western Hemisphere's human rights regime lags well behind its European counterpart. There is a similar institutional set up with an Inter-American Convention Commission to take up cases from individuals as well as states and a Court but the system has had very little influence. Gross human rights violations in most of its 26 parties throughout much of its history have undermined the regime's credibility as has the non-participation in the court of its potentially two most influential members; Canada and the United States.

Africa

The African Union's (AU) African Charter on Human and People's Rights (Banjul Charter) of 1981 covers nearly all of Africa and features a

Commission that promotes human rights but there is, as yet, no implementing body. A1998 protocol did set up a court but it has yet to function. The Economic Community of West African States (ECOWAS) does, however, have a functioning court and in 2008 passed a landmark verdict against the government of Niger for failing to protect a girl from being sold to slavery[vii].

Foreign Policy

The 1990s saw something of a rise in 'ethical foreign policy' with countries declaring that human rights would be allowed to enter the calculations of foreign policy objectives long dominated by the geopolitics of Cold War. In the UK Robin Cook was explicit in stating this on becoming foreign minister of the Labour government in 1997 and, in the US, the '**Clinton doctrine'** emerged with greater emphasis on the diplomatic encouragement of democracy and human rights than seen since the Wilson government of the 1920s. In fact, however, the starting point of this development can be traced back the **Detente** era of the Cold War in the 1970s when it appeared that the conflict was coming to an end with a significant thaw in East-West relations. The Helsinki Accords of 1975 was the high point of détente; a wide ranging diplomatic / human rights treaty which saw the West agree not to interfere in the affairs of the Eastern Bloc in exchange for the Soviets improving human rights in their empire. A notable improvement in political persecution in the USSR did occur after this and also in the West since the US was now vulnerable to charges of hypocrisy if they persisted in propping up oppressive

military dictatorships who took an anti-communist line. An ethical foreign policy is always a hostage to fortune, however, and numerous claims of hypocrisy have been levelled at the US, UK and other countries when lurches back to following the 'national interest' have occurred.

On a more consistent level human rights have been clearly stated as an objective of Dutch and Norwegian foreign policy since the early 1970s. Norway and the Netherlands together with Sweden and Canada came to be known as the 'Like Minded Countries' for their generous foreign aid budgets and particularly for linking this to the human rights record recipient countries. The governments of Norway and Canada have subsequently played the lead roles in launching the Human Security Network; an alliance which advocates the development of global policies focused on the human interest, whether or not these happen to coincide with state interests. By 2010 the network had expanded to include eleven other states, both geographically and politically diverse (Austria, Chile, Costa Rica, Greece, Republic of Ireland, Jordan, Mali, Netherlands, Slovenia, Switzerland and Thailand). Cynics have suggested that this sort of strategy is just a tactical move by less powerful governments to raise their diplomatic profile through populist and that it is easier to take the moral high ground when you can more easily avoid the tough politics of the 'low ground'. IR human rights specialist Jack Donnelly, for example, comments that "small states rarely have to choose between human rights and other foreign policy goals" (Donnelly 2007: 135). The US and UK have used

such arguments in defending something of a return to Cold War **realpolitik** in controversial actions taken in the 'War against terror" since 2001, such as the prolonged British derogation from Article 5 of the European Convention (covering rights on arrest), to allow for legal principles in place since Magna Carta to be suspended for arresting terrorist suspects.

Box 22. 4 Craig Murray
Craig Murray was UK ambassador to Uzbekistan, an important ally in the 'War Against Terror', from 2002 to 2004 when he was withdrawn by the Foreign Office after attracting much controversy and media interest during his tenure. Murray had felt compelled to speak out about human rights abuses perpetrated by the Uzbeki government against Islamic insurgents (which notoriously included the boiling of suspects to extract confessions), corroborated by several human rights pressure groups (Human Rights Watch 2004). The UK government were keen not to offend the Uzbeki government, and charges of improper conduct used to justify Murray's withdrawal were widely seen as a smokescreen for an exercise in **realpolitik.**

Do you think Murray was right to speak out or- as a Civil Servant rather than a politician- should he have respected his employers wishes and put national interest before human rights?

Humanitarian Intervention

The most significant foreign policy initiative to implement human rights that can be taken is to use force in order to end humanitarian suffering. The table in the case study box presents a chronology of military interventions since the end of the Second World War which have purported to have been inspired, at least partially, by the motivation of relieving the suffering of nationals distinct from the interveners. Such interventions are most associated with the modern age but their origins can be traced back to the 19th Century Concert of Europe era. Concert powers occasionally enforced their agreement to abolish the slave trade by intercepting Arab slave ships returning from Africa and sent troops to lend support in several parts of the Ottoman Empire prompted by Turkish massacres.

Case Study box- Notable 'humanitarian interventions' in the UN era

date	**Intervention**	**Interveners**	**humanitarian spur**
1960-4	Congo	1. Belgium, 2. UN, 3. Belgium & USA	Civil war and massacres following independence (from Belgium).
1965	Domincan Republic	USA	Protect foreign citizens from new military dictatorship.
1971	East Pakistan	India	Pakistani genocide against breakaway region (Bangladesh).
1978	Zaire	France & Belgium	Massacres of civilians by anti-government guerillas.
1978	Cambodia	Vietnam	Politicide of various sections of own people by Khmer Rouges government.
1979	Uganda	Tanzania	Expulsions, massacres and human rights abuses against ethnic minorities and opponents.
1979	Central African Republic	France	Overthrow of Bohasia government responsible for massacres of civilians.
1983	Grenada	USA and Organization of East Caribbean States	Protect foreign citizens after military coup.
1989	Panama	USA	Protect foreign citizens in civil unrest
1990-7	Liberia	1. Nigeria 2. ECOWAS	Restore order amidst Civil War
1991	Iraq	UN	Protect Kurds in North and 'Marsh Arabs' in South from government massacres
1992	Yugoslavia	UN	Protect Bosnian Muslims from Serb massacres
1992-3	Somalia	UN	Restore order amidst Civil War
1994-7	Haiti	UN	Restore democracy and order following military coup
1997	Sierra Leone	ECOWAS	Restore order amidst Civil War
1999	Kosovo (Yugoslavia)	NATO	Protect Kosovar Albanians from Serb massacres
1999	East Timor (Indonesia)	INTERFET[1] (Australia, UK, Thailand, Philippines & others)	Maintain order in transition to independence

All of the above listed 'humanitarian interventions' have been contentious. Go through the table and list any non-humanitarian motives you suspect or know to be applicable for the intervention concerned.

Differentiating between a humanitarian military action and one motivated by more traditional goals of gain, self-defence or ideology is a difficult judgement. In all of the listed cases one or more of these more familiar reasons to take up arms have been claimed by some observers to be the real cause of war.

The legal basis for humanitarian intervention is a moot point and it has been in and out of fashion in international affairs over the last three centuries. Dutch jurist and father of International Law Hugo Grotius, in the seventeenth century, considered rescuing imperilled non-nationals to come into the category of just war but it was not until the Concert of Europe era in the nineteenth century that the concept was first put into practise, albeit sporadically. Humanitarian intervention fell out of favour amidst the amoral realism of twentieth century state practise but rose to prominence again in the '**New World Order**' that was heralded by the demise of the Cold War in 1990. Despite more frequent recourse to it in recent years, humanitarian intervention remains a highly contentious concept in international relations since it challenges that fundamental underpinning of the **Westphalian system**, state sovereignty. International Law is ambiguous on the issue with the UN Charter appearing both to proscribe and prescribe the practise. Articles 2.4 and 2.7 uphold the importance of sovereignty and the convention on non-interference in another states affairs but Chapter VII suggests that extreme

humanitarian abuses can constitute a 'threat to peace' legitimizing intervention.

Are Human Rights 'Right'?

Although it is entirely predictable that a tyrannical government will oppose calls for it to improve its human rights record many Realists also voice concern over the notion of a global bill of rights on principle. The main arguments against implementing and further developing human rights in international relations can be summarised as follows:

a) *The humanitarian figleaf*

When human rights abuses in a given country are alleged, and particularly when action to remedy this is called for, the suspicion of the accused and many onlookers is often that this is merely an excuse by the accuser for advance more basic self-interests. One man's humanitarian intervention is always another man's imperialist or power-inspired venture. All of the interventions listed in the case study box were opposed by some states, unconvinced by moral claims of the intervener. In all cases other motivations for intervention can easily be found. NATO's 1999 action in Yugoslavia, ultimately, was 'sold' to the general public of the intervening countries more on the grounds of maintaining European order than on averting humanitarian catastrophe. Some measure of self-interest, alongside compassion for others, appeared to be necessary to justify going to war. The notion of humanitarian

war was more clearly undermined when the US and UK, unable to justify the 2003 Iraq War on legal or self-defence grounds when no Weapons of Mass Destruction could be found, switched instead to a justification of regime change on humanitarian grounds.

b) *Inconsistency in application*

It is quickly obvious from looking at the table in the Case box that humanitarian interventions have not been consistently applied in the event of widespread human rights abuses. The willingness of NATO to act in defence of the Kosovar Albanians and the UN's 1991 initiatives in Iraq stood in stark contrast to the lack of repsonse to the far greater horrors which occurred in Rwanda's genocidal implosion of 1994. Central Africa in the post-Cold War landscape lacked the strategic importance to the major powers of the Middle East or Eastern Europe. Equally, humanitarian intervention is always more likely to be considered an option where the target state is not going to be too tough a military opponent. Power politics dictates that the Chinese suppression of Tibetan rights or Russian massacres of Chechen seperatists were / are never likely to awarded the same response as Serb or Iraqi atrocities. In general diplomacy ethical foreign policies have frequently been relaxed when- as in the Uzbekistan case referred to earlier- the trump card of national interests is played. Selective justice undermines the credibility of asserting human rights in international relations many claim.

c) *Meddling is likely* to *worsen the situation*

Even where a clear case of tyranny can be established, there is the concern that a diplomatic or military intervention may not be the answer to the problem in that it may well enflame the situation. At one level some question whether the aggressive response of a humanitarian intervention can ever be a legitimate way to punish acts of aggression. On another level, many Realists contended that NATO's action in defence of the Kosovar Albanians led to an escalation of the Serb campaign against them. US military historian Edward Luttwak, for example, has called upon the international community to let conflicts run their natural course and 'Give War a Chance'.

> Policy elites should actively resist the emotional impulse to intervene in other peoples' wars—not because they are indifferent to human suffering but precisely because they care about it and want to facilitate the advent of peace. (Luttwak 1999: 44))

In this view international interference in local disputes tends just to temporarily dampen the conflict which will then inevitably resurface once the interveners have gone. In view of this, it may be better to let the dispute run its course and reach a natural conclusion.

d) *Rights are relative*

The chief moral objection to the universal application of human rights is the position commonly known as cultural relativism. Cultural relativism argues that the world's cultural diversity means that any attempt to apply rights universally is, at best, difficult and, at worst, an immoral imposition of dominant cultural traits. Judging a country as being a danger to its own citizens is likely to be prejudicial since such judgements are likely to be made by the dominant power of the day and so, in effect, represent a hegemonic imposition of a particular ideology. Recent humanitarian interventions have been dominated by the US, a country which has otherwise sometimes shown a disinterest in furthering the implementation of human rights, such as by not partaking in the ICC .

The Foreign Minister of Singapore, Wong Kan Seng at the Vienna Conference in 1993 voiced the view of several Asian governments, who had met earlier that year to release the 'Bangkok Declaration', that the extent and exercise of human rights "varies greatly from one culture or political community to another" and "are the products of the historical experiences of particular peoples" (Seng 1993). This statement in support of cultural relativism came forty-five years after the first major articulation of this viewpoint in international politics in the run up to the 1948 Universal Declaration of Human Rights. Concerns at the notion of a global bill of rights riding roughshod over the minority cultures of the world prompted leading

anthropologists, including Melville Herskovits and Ruth Benedict, to petition the UN Commission for Human Rights.

In Benedict's view, and that of most traditional anthropologists, the notion of what is morally right can only equate to what is customary within a given society (Benedict 1934). Hence the notion of rights pertaining to all humankind is not 'natural'. Rights are the rules of mutual give and take which develop over time within a society in order for it to function peacefully and survive. Rights here are seen as being implicit agreements arrived at purely within societies.

The Universalist's Response

Universalists suggest that a fundamental weakness with Realist and relativist arguments in regards to human rights is that they presuppose that governments can be relied upon to secure the rights of their individual constituents and that the states they govern equate to the national cultures we should respect. Nations and states, however, do not match up. There are numerous stateless nations- like the Kurds or the Basques- and numerous multi-national states- like the UK, Russia or Nigeria. Multinationalism, whether arrived at through migration or historical accident (such as in the partitioning of Africa), is the norm in the modern state system. If the states of the world mirrored its distinct 'cultures' cultural relativism could maybe stand as a realistic alternative to universalism in protecting human rights. In the real world, however, how are

the rights of cultural minorities within states to be fully safeguarded? The fact that national or religious minorities are frequently imperilled rather than protected by states cannot be questioned. The Kurds in Saddam's Iraq, the Jews in Hitler's Germany, the Tutsis in mid 1990s Rwanda or the Darfurians in contemporary Sudan were massacred because they were perceived by their governments to be alien to the national culture. Women, the disabled, homosexuals and people linked by any other form of collective identity stand little chance of having their 'cultural differences' respected when they overlap with far more influential 'cultures'. Entrusting states to be the arbiters of human rights frequently leads to the imposition of dominant cultural norms on minority cultures in precisely the fashion that relativism purports to prevent. In the same way that no countries tolerate criminal 'cultures' within their societies, Liberal Universalists hold that the global society of humanity should not tolerate acts of barbarity- like genocide and torture- which are outside the basic norms of human behaviour and mutual interest that link us all.

Conclusions

Human Rights have advanced significantly over the last 60 years and the individual has started to emerge as an entity in international law and

international affairs alongside states and non-state actors, challenging the sovereign underpinnings of the Westphalian system in operation for nearly 500 years. Liberals support this development and wish it to continue arguing that human rights are 'natural law' and can and should inform international law and politics. Many neo-Realists, particularly of the English School variant, respond by complaining that states should not all be tarred with the same brush and that the tyranny that has marked the rule of many brutal governments in history is not an inevitable feature of the state system. From this perspective the best way to advance protection for all individuals comes not from relying on arbitrarily defined and implemented global standards of justice but from allowing 'particular states to seek as wide a consensus as possible and on this basis to act as agents of a world common good' (Alderson & Hurrel 2000: 233) . Whilst most of the world accepts the notion of people have rights of some sort, the question of what those rights are how they can best be safeguarded is still hotly disputed.

ESSAY QUESTIONS

1. Describe and evaluate the United Nation's record in advancing human rights law.
2. Why, when global standards exist, do human rights continue to be abused in the contemporary world?

3. Why has enforcing a global set of human rights standards proved such a difficult task?
4. To what extent do global human rights instruments safeguard the liberty of all of the world's people?

REFLECTIVE QUESTION

In the US TV series '24'an Islamic Fundamentalist suicide bomber is held by government agents whilst a nuclear device he has left in an urban area is primed to detonate. Fearless for his own life the agents decide to threaten to kill the terrorist's family members to get him to reveal the bomb's location. Two or three innocent lives may have to be sacrificed in order to save thousands of innocent lives it is concluded.

COULD SUCH AN EXTREME MEASURE BE ACCEPTABLE?[viii]

RELFLECTIVE QUESTION- Are values universal or cultural?

List any values you consider as applicable to all people in the world (e.g. free speech, equality for women). The shorter your list the more of a relativist and less of a universalist you are.

RECOMMENDED READING

Donnelly, J (2007) *International Human Rights* (3rd edition), Cambridge USA: Westview.

A classic IR text on human rights which explores the relativism-universalism debate.

Robertson, G. (2007) *Crimes Against Humanity. The Struggle for Global Justice*, (3rd edition) London: Penguin.

A thorough insiders guide to the politics of human rights from a prominent lawyer. Robertson pulls no punches in giving his expert assessments of international instruments and the record of governments in ratifying and observing them.

Schabas, W. (2000) *Genocide in International Law. The Crime of Crimes*, Cambridge: Cambridge University Press.

This book provides an authoritative history of the genocide convention and analyses the contemporary legal significance of this obligation to act in the face of humanitarian horrors.

R. Smith (2007) *Textbook on International Human Rights* (3rd ed) Oxford: Oxford University Press.

A comprehensive and systematic legal overview of global and regional human rights regimes.

USEFUL WEB LINKS

Amnesty International: http://www.amnesty.org/

Genocidewatch: http://www.genocidewatch.org/

International Criminal Court:

http://www.icccpi.int/php/show.php?id=home&l=EN

Rummel, R. Freedom, Democracy, Peace; Power, Democide and War

http://www.hawaii.edu/powerkills/welcome.html

Columbia University, Human Rights and Humanitarian Affairs Information Resources

http://www.columbia.edu/cu/lweb/indiv/lehman/guides/human.html

United Nations, Human Rights site http://www.un.org/rights/

Human Rights Watch http://www.hrw.org/

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International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) *2009 Report on State-sponsored Homophobia* http://ilga.org/ilga/en/article/1251 (accessed 5.3.10)

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Schulz, M.(2008) 'UN Treasure Honours Persian Despot', *Spiegel Online International* 15/7/08 http://www.spiegel.de/international/world/0,1518,566027,00.html (accessed 30.9.08)

Seng, W.K. (1993), Statement at World Conference on Human Rights, Vienna June 16

R. Smith (2007) *Textbook on International Human Rights* (3rd ed) Oxford: Oxford University Press.

UNHCR (2007) *The 1951 Refugee Convention,* http://www.unhcr.org/basics/BASICS/3c0f495f4.pdf

World Conference on Human Rights (1993) *Vienna Declaration and Programme of Action* 14-25 June, Vienna.

[i] It should be noted that many historians dispute that the Cyrus Cylinder is any sort of declaration of human rights and argue that this was largely invented by the Shah of Iran in the 1970s for nationalistic purposes and then acknowledged by the UN in order to curry non-western support for human rights law. M.Schulz, 'UN Treasure Honours Persian Despot', *Spiegel Online International* 15/7/08 http://www.spiegel.de/international/world/0,1518,566027,00.html (accessed 30.9.08)

[ii] By 2010 113 states were party to the individual petition protocol and 72 to the death penalty protocoal.

[iii] Attorney General of Israel v. Eichmann, 36 International. Law Report 277

[iv] A procedure in which the prisoner has water poured into their mouth so that they imagine they are drowning.

[v] *Public Prosecutor v. Djajic*, No. 20/96 (Sup. Ct. Bavaria 23 May 1997)

[vi] Democratic Republic of the Congo v Belgium, ICJ verdict Feb 14 2002 General List no. 121.

[vii] Hadijatou Mani Koraou v. Niger 2008.

[viii] In the show the full extent of this moral dilemma is circumvented by the Agent's actually faking the murder of the bomber's children.